



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,358	05/18/2006	Geoffrey William Miller	P08836US00/BAS	9201

881 7590 07/01/2009
STITES & HARBISON PLLC
1199 NORTH FAIRFAX STREET
SUITE 900
ALEXANDRIA, VA 22314

EXAMINER

SHEVIN, MARK L

ART UNIT	PAPER NUMBER
----------	--------------

1793

MAIL DATE	DELIVERY MODE
-----------	---------------

07/01/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/564,358

Applicant(s)

MILLER ET AL.

Examiner

MARK L. SHEVIN

Art Unit

1793

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See continuation sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Mark L. Shevin/

/George Wyszomierski/
Primary Examiner
Art Unit 1793

Applicants assert (p. 2, para 2) that nowhere in the cited prior art is there any teaching or disclosure which would lead one of ordinary skill in the art to separate a laterite ore into a higher grade and a lower grade and subsequently treat the lower grade to a heap leach process as claimed.

In response, the additional references of Queneau, Patzelt, and Parker cure this deficiency as explained on p. 3-5 of the Office Action mailed January 22nd, 2009.

Applicants assert (p. 3, para 2) that one skilled in the art would not have seen a benefit from modifying the disclosure of Agatzini by adding to it and removing from it various steps to arrive at the claimed invention.

In response, the benefits of modifying Agatzini include improved leaching efficiency as taught by Queneau and Patzelt.

Applicants assert (p. 4) that Agatzini does not address the issue of what to do with the coarse siliceous low grade reject fraction.

In response, Patzelt separates ore into oversize material which is heap leached and the fines are processed via tank agitation leaching (col. 4, lines 34-55).

Applicants assert (p. 5, para 2) that one of ordinary skill would not have been motivated to treat the coarse siliceous reject fraction by heap leaching as Agatzini clearly discloses a method which treats the whole ore.

In response, claim 2 of Agatzini heap leaches the low grade ore while the secondary references of Queneau, Patzelt, and Parker provide motivation by way of expected increases in recovery efficiency by separating the ore into low and high grade (fine and coarse fractions) for separate processing.

Applicants assert (p. 6, para 2-3) that Queneau cannot be considered as providing a missing link between the process of Agatzini and the present application as Queneau teaches away from the economic recovery of nickel from the rejected, low grade, fraction.

In response, this line of argument is unpersuasive as Agatzini already economically recovers nickel from low and very low grade fractions and Queneau teaches that higher recoveries of nickel can be achieved by high pressure acid leaching (HPAL) of the fine grade ore to optimize extraction efficiency. Although Queneau does discard the low grade fraction, the teachings of all the references in the 103 combination must be considered in weighing a "teaching away" In this case the unexpected recovery of Ni and Co from the low grade fractions by Agatzini weighs heavily towards the latter treatment of any discarded low grade fraction.

Applicants assert (p. 7) that in view of Agatzini and Queneau, it would have been superfluous to separate whole ore into high and low grade, as Agatzini teaches treating both together.

In response, motivation to separate the ore into high and low grades comes from the expectation of higher Ni and Co recovery by using specific processes tailored to the different grades of ore as taught by Patzelt, Queneau, and Parker.

Applicants assert (p. 8) that one of ordinary skill would not have been led to modify Agatzini and/or Queneau to into any way incorporate the various processing steps of Patzelt to arrive at the claimed process as Patzelt is "not directed to the same process as the present invention".

In response, cited art need only be analogous and Patzelt is directed to the analogous process of separating ore into coarse and fine fractions. It is recommended by Patzelt that the coarse material be heap leached and the fine material tank leached (col. 1, lines 51-58).

Applicants assert (p. 9, para 3 to p. 11, para 1) that Parker is non-analogous art.

In response, Parker is analogous art in that it deals with the process of improving percolation by de-sliming materials by classification to improve leaching kinetics, which is relevant and analogous to all leaching processes.

Applicants assert (p. 11 - p. 13) that the instant independent claims are nonobvious and thus patentably distinct of the cited prior art as it was not known, at the time of the invention, that nickel could be economically recovered from coarse ore material and that Patzelt in particular is insufficient in teaching this as Patzelt is drawn to recovering copper from sulfite.

In response, Patzelt is analogous art and provides motivation, along with Queneau and Parker to separate the nickel ore of Agatzini into high and low grade coarse and fine fractions and the heap leach the low grade fraction and tank leached the fines in expectation of higher nickel recovery and greater process efficiency as explained in the previous office action.